

§ 708.29

§ 708.29 What must the parties to a complaint prove?

The employee who files a complaint has the burden of establishing by a preponderance of the evidence that he or she made a disclosure, participated in a proceeding, or refused to participate, as described under § 708.5, and that such act was a contributing factor in one or more alleged acts of retaliation against the employee by the contractor. Once the employee has met this burden, the burden shifts to the contractor to prove by clear and convincing evidence that it would have taken the same action without the employee's disclosure, participation, or refusal.

§ 708.30 What process does the Administrative Judge follow to issue an initial agency decision?

(a) The Administrative Judge will issue an initial agency decision on your complaint by the 60th day after the later of:

(1) The date the Administrative Judge approves the parties' agreement to cancel the hearing;

(2) The date the Administrative Judge receives the transcript of the hearing; or

(3) The date the Administrative Judge receives post-hearing submissions permitted under § 708.28(b)(7) of this subpart.

(b) The Administrative Judge will serve the initial agency decision on all parties.

(c) An initial agency decision issued by the Administrative Judge will contain appropriate findings, conclusions, an order, and the factual basis for each finding, whether or not a hearing has been held on the complaint. In making such findings, the Administrative Judge may rely upon, but is not bound by, the report of investigation.

(d) If the Administrative Judge determines that an act of retaliation has occurred, the initial agency decision will include an order for any form of relief permitted under § 708.36.

(e) If the Administrative Judge determines that an act of retaliation has not occurred, the initial agency decision will state that the complaint is denied.

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§ 708.31 If no hearing is conducted, what is the process for issuing an initial agency decision?

(a) If no party wants a hearing after the issuance of a report of investigation, the Administrative Judge will issue an initial agency decision by the 60th day after the hearing is canceled pursuant to § 708.24. The standards in § 708.30, governing the issuance of an initial agency decision, apply whether or not a hearing has been held on the complaint.

(b) The Administrative Judge will serve the initial agency decision on all parties.

§ 708.32 Can a dissatisfied party appeal an initial agency decision?

(a) Yes. By the 15th day after receiving an initial agency decision from the Administrative Judge, any party may file a notice of appeal with the OHA Director requesting review of the initial agency decision.

(b) A party who appeals an initial agency decision (the appellant) must serve a copy of the notice of appeal on all other parties.

(c) A party who receives an initial agency decision by a Administrative Judge has not exhausted its administrative remedies until an appeal has been filed with the OHA Director and a decision granting or denying the appeal has been issued.

§ 708.33 What is the procedure for an appeal?

(a) By the 15th day after filing a notice of appeal under § 708.32, the appellant must file a statement identifying the issues that it wishes the OHA Director to review. A copy of the statement must be served on the other parties, who may file a response by the 20th day after receipt of the statement. Any response must also be served on the other parties.

(b) In considering the appeal, the OHA Director:

(1) May initiate an investigation of any statement contained in the request for review and utilize any relevant facts obtained by such investigation in conducting the review of the initial agency decision;

(2) May solicit and accept submissions from any party that are relevant